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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,537	10/23/2001	Curtis D. Mowry	SD6790/S96443	4708

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04/22/2004

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EXAMINER

CROSS, LATOYA I

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/035,537	Applicant(s) MOWRY ET AL.	
	Examiner LaToya I. Cross	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 and 21-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-20 and 34-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This Office Action is in response to Applicants' amendments dated February 5, 2004. Claims 1-38 are pending. Claims 1-6, 21-33 are withdrawn from consideration. Claims 34-38 have been newly added.

Withdrawal of Rejections from Previous Office Action

- The anticipatory rejection of claims 7, 8, 10-13 and 20 over Meuzelaar is withdrawn in view of Applicant's amendment to recite the structure of the micropyrolyzer used in the method.
- The anticipatory rejection of claims 7, 9, 15, and 20 over Wohltjen et al is withdrawn in view of Applicant's amendment to recite the structure of the micropyrolyzer used in the method. It appears from the reading of Wohltjen et al that the resistive heating unit is not disposed on the substrate onto which the sample is collected, as recited in claim 7. See col. 5, lines 34-50 of Wohltjen et al.
- The obviousness rejection over Bertrand is withdrawn in view of Applicant's amendment to recite the structure of the micropyrolyzer used in the method.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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2. Claims 7, 20, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 4,710,354 to Behar et al.

Behar et al teach a micropyrolyzer for the pyrolysis of solid or liquid samples taken in small amounts. The device comprises a tubular oven (1) having a wall inside of which defines a heating zone (3), which has attached to it a heating means (4). The heating means is a resistive heating means (col. 2, lines 63-66). The surface that the sample is heated on is preferably made of gold. A small sample is introduced into sample rod (9) and inserted into the oven. Once in the heating position, the oven is heated to a temperature of 550oC. After pyrolysis, heating is stopped. The vaporized products are removed from the trap and analyzed by a gas phase chromatography apparatus, which may be connected to the oven output. See col. 4, lines 45-50, lines 55-68 and col. 5, lines 44-51.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be anticipated, within the meaning of 35 USC 102(b) in view of the teachings of Behar et al.

3. Claims 7-20 and 34-38 are rejected under 35 U.S.C. 102(a) as being anticipated by "Rapid Identification of bacteria with miniaturized pyrolysis/GC analysis" authored by Morgan et al.

Morgan et al teach the identification of bacteria and other biological substances using micropyrolyzers. The micropyrolyzer comprises a metal resistive heater formed on top of a silicon nitride membrane. The micropyrolyzer is capable of heating up to 70°C/millisecond. The micropyrolyzer requires 250mW power. See figure 3. According to figure 2, the sample is collected and introduced into the pyrolyzer. The pyrolyzer rapidly heats the sample to obtain a vaporized product. The vaporized products obtained after heating are introduced

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into a gas chromatograph for analysis. With respect to the samples to be analyzed, Morgan et al teach fatty acids (page 199 and figure 1). The reference also teaches the addition of methylation reagents (such as tetramethylammonium hydroxide) to the sample as a derivatizing agent.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be anticipated, within the meaning of 35 USC 102(a) in view of the teachings of Morgan et al.

Response to Arguments

4. Applicant's arguments with respect to claims 7-20 and 34-38 have been considered but are moot in view of the new ground(s) of rejection.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256.

The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Jill Warden
Supervisory Patent Examiner
Technology Center 1700